

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

**RECEIVED**

**FEB 12 1997**

In the Matter of )  
)  
Replacement of Part 90 by Part 88 to )  
Revise the Private Land Mobile Radio )  
Services and Modify the Policies )  
Governing Them )  
)  
and )  
)  
Examination of Exclusivity and )  
Frequency Assignment Policies of the )  
Private Land Mobile Radio Services )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

PR Docket No. 92-235

TO: The Commission

**REPLY COMMENTS OF UTC  
ON ITA's PROPOSED TECHNICAL BLUEPRINT**

Pursuant to Section 1.415 of the FCC's Rules, UTC, The Telecommunications Association (UTC)<sup>1</sup>, respectfully submits the following reply comments in response to the FCC's Public Notice, DA 97-206, dated January 28, 1997, inviting comment on the Industrial Telecommunications Association's (ITA) proposal to consolidate the current Part 90 Radio Services into two pools: a Public service pool and a Private Wireless Service Pool.

---

<sup>1</sup> UTC was formerly known as the Utilities Telecommunications Council.

045

As the national representative on communications matters for the nation's electric, gas and water utilities and natural gas pipelines, UTC submitted comments opposing the ITA proposal as currently written. Instead, UTC advocated the creation of a "3-pool" approach that explicitly recognized public service licensees, such as utilities, pipelines and railroads, as a distinct category of users whose operating requirements and public service obligations merited separate treatment from the more generic private radio services. Below, UTC again addresses the ITA proposal in the context of other comments filed in this proceeding. However, in hopes of advancing the discussion beyond the rhetoric to an actual solution, UTC proposes a number of modifications to the ITA proposal to make it more acceptable.

**I. The Two-Pool Approach Is Workable If It Is Modified To Provide Protections To Public Service Licensees**

In surveying the comments it is interesting to note that none of the commenters support the ITA 2-pool technical blueprint in its entirety.<sup>2</sup> Indeed, the vast majority of commenters ranging from individual private land mobile licensees<sup>3</sup> to ad hoc coalitions of radio service groups,<sup>4</sup> adamantly oppose the ITA proposal as being against the public interest.

---

<sup>2</sup> Even PCIA who had initially filed a Joint Consolidation proposal with ITA, opposed certain aspects of the ITA blueprint.

<sup>3</sup> American Electric & Power, Carolina Power & Light, City of San Antonio, City of Austin, Consumers Energy, Detroit Edison, Indian Annapolis Power & Light, Kentucky Utilities, Ohio Edison, National Fuel, Public Service Electric & Gas, Sierra Pacific Power, Tri-State Generation and Transmission, Washington Suburban Sanitary Commission,

<sup>4</sup> Coalition of Industrial and Land Transportation Radio users (Coalition).

While UTC genuinely believes that its “3-Pool” proposal (Public Safety; Public Service; and Business/Commercial) is the best means to achieve the efficiencies of consolidation while also preserving the ability of the nation’s essential public service organizations to meet their private radio communications requirements, UTC is not so rigid in its position that it is not willing to consider alternatives to its proposal.

The primary objection of the commenters to the ITA 2-pool proposal is that it is overly simplistic. The ITA plan, as currently written, amounts to a “one-size-fits-all approach” to spectrum, management and use that does not adequately account for the legitimate distinctions that exist between the various radio services in terms of the relative need for access to communications channels. Specifically, public service entities, such as utilities, pipelines and railroads, have a compelling public interest need for access to reliable and clear communications channels that is distinct from that of many other private radio services. A number of public service utilities detailed the critical public safety-related functions that their communications channels support. For example, Public Service Electric & Gas indicated that its private land mobile radio channels are used in conjunction with the New Jersey state office of emergency management. This system utilizes utility-owned and maintained radios to provide interoperability among and between PSE&G and state public safety agencies. In addition, PSE&G noted that its communications system is used for nuclear communications including a warning systems.<sup>5</sup> Similarly, Consumers Energy related that Public Safety agency personnel are neither equipped or trained to deal with energy system related emergencies, and as a consequence, Consumer’s electric and gas crews are

---

<sup>5</sup> PSE&G, p. 3.

routinely requested by police and fire departments to respond to emergencies situations.<sup>6</sup>

Recognizing that the flaw in the ITA proposal is its failure to distinguish between the relative criticality of the functions served by the licensees that would comprise the “Private Wireless” pool, UTC suggests that a workable solution would be to create sub-allocations of channels within the consolidated pool for public service entities, such as utilities, pipelines and railroads. The adoption of such a sub-allocation within the larger pool would be consistent with the Blueprint’s proposed special protection of the railroad radio services and airport ground personnel channels. As noted in its comments, UTC agrees that the railroads and airport maintenance crews have operational and safety requirements that merit different treatment from the majority of the private radio services; however, ITA has not provided any reason for not extending the same protections for other critical public service providers such as utilities and pipelines.

The fact that the ITA proposal concedes the need to provide a level of special protection for some types of public service, such as railroads, undermines their entire argument that there is no need to differentiate among the various private wireless users on the basis of their type of service. It is therefore appropriate that any 2-pool plan be refined to afford the same level of protection to other public service providers, such as utilities and pipelines, as it affords railroads and airport ground personnel. Specifically, with regard to currently allocated Power Radio Service channels, including the new splits from these channels, UTC recommends the adoption of the following footnote protection.

**Footnote X --** This frequency will be assigned only to persons eligible for licensing in the Power Radio Service as defined in 90.63, as of January 1, 1997, provided, however, that other private wireless eligibles may apply to use this frequency upon making the following showing: (1) a determination by a qualified

---

<sup>6</sup> Consumers Energy, p.2.

frequency coordinator that there are no other satisfactory frequencies available within the applicant's area of desired operation; (2) a statement from a coordinator having responsibility for coordination of this frequency concurring in its assignment in the manner requested by the application, provided that, in cases where concurrence is not given, the coordinator of this frequency must provide an explanation why the requested sharing is inappropriate and; (3) a statement that the proposed use of the frequency will not violate any of the technical limitations applicable to the use of the frequency.<sup>7</sup>

Under this plan channels that have historically been used primarily by utilities will be preserved for that use, but also will be accessible to other services through traditional intercategory sharing criteria. UTC believes that its recommendation represents a balanced approach that provides public service utilities with the requisite security to ensure continued access to clear and reliable communications channels, while at the same time accommodating the needs of other radio services to access additional radio channels. UTC would support similar protections for other public service providers, such as pipelines and railroads.

## **II. Any Consolidation Plan Must Allow Parties To Seek Exclusivity**

A fundamental goal of the entire refarming proceeding is to encourage the use of more efficient technologies, such as trunking. However, as the Commission noted in the *FNPRM* in this proceeding exclusivity is an essential pre-requisite for the introduction of trunking technology. Given the shared nature of the Private Land Mobile Radio environment below 512 MHz the only practical way to achieve exclusivity in these bands is through a negotiated or coordinated approach in which the existing licensees would attempt to enter into contractual agreements with neighboring co-channel licensees to establish areas of exclusive assignment, thereby precluding new co-channel licensees

---

<sup>7</sup> In its Comments on the ITA plan, AAR recommended nearly identical protections for railroad channels.

from being licensed within the area, except by mutual agreement of all parties to the exclusivity plan. While such an arrangement goes by various names, “shared-exclusivity” or “protected service areas,” a hallmark of all of these plans is that the existing users be provided some window of time in which they can attempt to secure their channels and negotiate an exclusivity agreement.

Among the various private radio services, public service utilities and pipelines are particularly well-suited to attempt to obtain some form of exclusivity. Public service entities, such as utilities and pipelines, often have *de facto* exclusivity in order to ensure secure and reliable communications. Further, these entities are more likely than other private land mobile users to have extensive service territories that would benefit from the wide-area trunked systems that shared exclusivity would allow. Finally, shared exclusivity may be more viable among public service utilities than other categories of users, as the more limited number of eligibles and similar functionalities between licensees affords a greater likelihood of co-channel licensees reaching a mutual agreement.

Therefore, if a two-pool consolidation plan is adopted, the FCC must delay the effectiveness these rules until final rules on exclusivity are established. Otherwise, incumbent licensees will be severely constrained in their ability to obtain exclusivity or implement spectrally efficient trunking systems. Further, any exclusivity program must necessarily contain a reasonable time period in which incumbents may file for exclusivity without additional licensing taking place on their channels. UTC supports the LMCC six-month transition period as a reasonable time period for parties to file for exclusivity in order to protect their existing service areas.

### **III. Prior-Coordination**

Finally, UTC reiterates its concern that ITA's coordination proposal presents an unworkable plan for handling post-consolidation concurrences. UTC believes that prior coordination notification, as outlined by the Coalition of Industrial and Land Transportation Radio Users, is a reasonable requirement. Prior coordination notification is used effectively in the point-to-point microwave service and should help to mitigate harmful interference in a consolidated PLMR radio pool environment.

### **IV. Conclusion**

While UTC continues to support a 3-pool approach to pool consolidation, its primary concern is that public service utilities and pipelines are ensured continued access to reliable communications channels. Accordingly, UTC recommends that if a 2-pool plan is adopted it should contain specific footnote protections for the radio channels utilized by the nation's public service entities, such as utilities, pipelines and railroads. In addition, the Commission must ensure that incumbent licensees are given a reasonable time period in which to file for exclusivity without additional licensing taking place on their channels.

**WHEREFORE, THE PREMISES CONSIDERED,** UTC requests the Federal Communications Commission to take action in accordance with the views expressed in these reply comments.

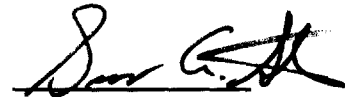
Respectfully submitted,

UTC

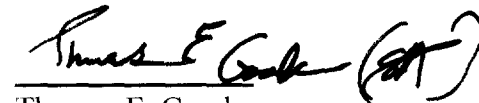
By:

  
\_\_\_\_\_  
Jeffrey L. Sheldon

General Counsel

  
\_\_\_\_\_  
Sean A. Stokes

Associate General Counsel

  
\_\_\_\_\_  
Thomas E. Goode

Senior Staff Attorney

UTC

1140 Connecticut Avenue, N.W.  
Suite 1140  
Washington, D.C. 20036  
(202) 872-0030

Dated: February 12, 1997